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PATENT

Practitioner's Docket No. LM(F)6509 NP

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Bryan L. Dalton et al.
Application No.: 10/809,641 Group No.: 2618
Filed: March 25, 2004 Examiner: Andrew Wendell
For: A SYSTEM FOR INTEGRATED MOBILE DEVICES

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TRANSMITTAL OF APPEAL BRIEF
(PATENT APPLICATION—37C.F.R. 41.37(c))

Transmitted herewith, is the **APPEAL BRIEF** in this application, with respect to the Notice of Appeal filed on July 25, 2007.

STATUS OF APPLICANT

This application is on behalf of

- ☒ other than a small entity.
☐ a small entity.

A statement

- ☐ is attached.
☐ was already filed.

CERTIFICATION UNDER 37 CFR §§ 1.8(a) and 1.10*

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[] An extension for _____ month(s) has already been secured and the fee paid therefore of \$_____ is deducted from the total fee due for the total month(s) of extension now requested.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Bryan L. Dalton et al.
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Attorney Docket No. : LM(F)6509 NP

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APPEAL BRIEF

Sir:

Following the Notice of Appeal filed July 25, 2007, Appellant presents this Appeal Brief. The Appeal Brief responds to the Office Action of April 26, 2007 (hereinafter the "Office Action").

1. **REAL PARTY IN INTEREST**

The real party in interest is Lockheed Martin Corporation. An assignment of this application to Lockheed Martin Corporation was recorded March 25, 2004, Reel/Frame: 015150/0278.

2. **RELATED APPEALS AND INTERFERENCES**

There are no related appeals or interferences.

3. **STATUS OF CLAIMS**

Claims 1-20 are currently pending in this application and are being appealed. Claims 1, 11, and 16 stand rejected under the written description requirement of 35 USC §112, first paragraph. Claims 1-14 and 16-20 stand rejected as unpatentable over Tsutsumi et al., US 2003/0078034 (hereinafter "Tsutsumi et al.") in view of Dorenbosch et al., US 2003/0235184 (hereinafter "Dorenbosch et al.") and Fishman et al., US 2002/0103935 (hereinafter "Fishman et al."). Claim 15 stands rejected as unpatentable over Tsutsumi et al. in view of Dorenbosch et al., Fishman et al., and Mercer, US 2004/0198322 (hereinafter "Mercer"). All of the rejections of claims 1-20 are hereby appealed.

4. **STATUS OF AMENDMENTS**

A Request for Reconsideration, with no amendment to the claims, was filed after the Final Rejection of April 26, 2007. The Advisory Action of July 10, 2007 stated that the Request for Reconsideration did not place the application in condition for allowance.

5. **SUMMARY OF CLAIMED SUBJECT MATTER**

A system 100 (Figs. 1-2) in accordance with the present invention as set forth in claim 1 includes a data concentrator computer 60, a mobile gateway device 70, separate and distinct from the data concentrator computer, for communicating with the data concentrator computer, a first mobile data acquisition device 40 communicating with the mobile gateway device, and a second mobile data acquisition device 50 communicating with the mobile gateway device (Specification, page 23, lines 1-7; Table 1). The mobile gateway device 70 allows direct communication between the first and second mobile data acquisition devices 40, 50, through broadcast messages from the mobile gateway device to the first and second mobile data acquisition devices, without communication with the data concentrator computer 60 (Specification, page 23, lines 7-10; Table 1).

A communication system 100 (Figs. 1-2) in accordance with the present invention as set forth in claim 11 includes a data concentrator computer 60, a mobile mailbox 72, separate and distinct from the data concentrator computer, for communicating with the data concentrator computer, a first mobile data acquisition device 40 communicating with the mobile mailbox, and a second mobile data acquisition device 50 communicating with the mobile mailbox (Specification, page 23, lines 11-17; Table 1). The mobile mailbox 72 allows peer to peer communication between the first and second mobile data acquisition devices 40, 50, through broadcast messages from the mobile mailbox to the first and second mobile data acquisition devices, without communication with the data concentrator computer 60 (Specification, page 23, lines

17-20; Table 1).

A computer program product 100 in accordance with the present invention as set forth in claim 16 allows communication between a plurality of mobile devices 40, 50 (Specification, page 23, lines 21-23; Table 1). The computer program product 100 includes: a first instruction for activating a first mobile device 40; a second instruction for requesting a roll call from a gateway device 70 by the first mobile device 40; a third instruction for broadcasting a please identify message to a second mobile device 50 and a third mobile device 50; and a fourth instruction for providing peer to peer communication between the first mobile device 40 and the second and third mobile devices 50 through broadcast messages from a mobile mailbox to the first and second mobile devices (Specification, pages 23-24, lines 21-24 & 1-8; Table 1). The peer to peer communication occurs without communication with a non-mobile data concentrator computer (Specification, pages 23-24, lines 21-24 & 1-8; Table 1).

6. GROUNDINGS OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether the rejection of claims 1, 11, and 16 under the written description requirement of 35 USC §112, first paragraph, is proper.
2. Whether the rejection of claim 1 as unpatentable over Tsutsumi et al. in view of Dorenbosch et al. and Fishman et al. is proper.
3. Whether the rejection of claim 11 as unpatentable over Tsutsumi et al. in view of Dorenbosch et al. and Fishman et al. is proper.
4. Whether the rejection of claim 15 as unpatentable over Tsutsumi et al. in view of Dorenbosch et al., Fishman et al., and Mercer is proper.
5. Whether the rejection of claim 16 as unpatentable over Tsutsumi et al. in view of Dorenbosch et al. and Fishman et al. is proper.

7. ARGUMENT

A. The rejection of claims 1, 11, and 16 as lacking written description under 35 USC §112, first paragraph

Claims 1, 11, and 16 have been rejected as being inadequately described. Since the Advisory Action did not address the arguments of the Amendment After Final Rejection of June 13, 2007 regarding this rejection, it is assumed that this rejection has been maintained.

The Office Action states that “broadcast messages from a mobile gateway device (mailbox) to the first and second mobile devices” are not clear to the Examiner (Office Action, page 2, para. 2). The Office Action cites the Specification, page 6, lines 3-7, and pages 8-9, lines 23-24 & 1, for the proposition that “the broadcast message is for

the other active mobile devices, but not broadcast to the first device" (Office Action, page 2, para. 2). As stated in claims 1, 11, and 16, the direct communication is between the first and second devices (i.e., communication occurs in both directions). As stated in the Specification, page 6, lines 3-7 and pages 8-9, lines 23-24 & 1, one mobile device may initiate the communication. This does not necessarily dictate that the communication ends there. Thus, the gateway device provides broadcast messages in both directions (Specification, page 6, lines 7-13 and page 9, lines 4-13). Table 1 of the Specification provides a detailed description of this communication as well. The subject matter of claims 1, 11, and 16 is adequately described. It is respectfully submitted that this rejection is improper and should be withdrawn.

The Office Action rejects claim 16 as being further inadequately described. Since the Advisory Action did not address the arguments of the Amendment After Final Rejection of June 13, 2007 regarding this rejection, it is assumed that this rejection has been maintained.

The Office Action states that "tangible medium" is not supported by the Specification. Pages 26-28 of the Specification describe the following terms, among others: a memory bus, a memory controller, a peripheral bus, a local bus using any of a variety of conventional bus architectures, read only memory (ROM), random access memory (RAM), a hard disk drive, a magnetic disk drive, an optical disk drive, associated computer-readable media for nonvolatile storage of data, data structures, computer-readable media, a CD, magnetic cassettes, flash memory cards, digital video disks, and Bernoulli cartridges. It is respectfully submitted that these terms describe a

“tangible medium” sufficiently to satisfy 35 USC §112, first paragraph. It is respectfully submitted that this further rejection of claim 16 is improper and should be withdrawn.

B. The rejection of claim 1 as unpatentable over Tsutsumi et al. in view of Dorenbosch et al. and Fishman et al.

Claim 1 has been rejected as unpatentable over Tsutsumi et al. in view of Dorenbosch et al. and Fishman et al. The M.P.E.P. sets forth the following criteria for an obviousness rejection under 35 U.S.C. §103:

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See, MPEP §706.02(j).

Claim 1 recites a communication system including a data concentrator computer, a mobile gateway device, a first mobile data acquisition device, and a second mobile data acquisition device. The mobile gateway device, separate and distinct from said data concentrator computer, communicates with the data concentrator computer. The first mobile data acquisition device communicates with the mobile gateway device. The second mobile data acquisition device communicates with the mobile gateway device. The mobile gateway device allows direct communication between the first and second mobile data acquisition devices, through broadcast messages from the mobile gateway device to the first and second mobile data acquisition devices, without communication with the data concentrator computer.

First, the Office Action cites paragraphs 5 and 11 of Dorenbosch et al. for motivation that it would have been obvious to “incorporate a gateway device separate from the data concentrator computer and a broadcast message from the gateway to first and second mobile devices” into Tsutsumi et al.’s network device. “in order to provide a high-speed floor control with minimum delay” (Office Action, page 4).

While this statement of motivation may generally be a worthwhile endeavor, this statement does not specifically address the modifications of Tsutsumi et al., by Dorenbosch et al., necessary to disclose the communication system recited in claim 1. In fact, would not separating the gateway device and data concentrator computer actually increase delays due to an increase in communication time? Further, this general statement of motivation is sufficiently vague to amount to no motivation at all.

Second, the Office Action cites paragraph 10 of Fishman et al. for motivation that it would have been obvious to “incorporate a mobile gateway device as taught by Fishman into a gateway device separate from the data concentrator computer and a broadcast message from the gateway to first and second mobile devices as taught by Dorenbosch into Tsutsumi’s network device in order to better customize content” (Office Action, page 4).

Again, while this statement of motivation may generally be a worthwhile endeavor, this statement does not specifically address the modifications of Tsutsumi et al., by Fishman et al., necessary to disclose the communication system recited in claim 1. How does adding a broadcast feature better customize content? Customize how?

Content of what? This general statement of motivation also is sufficiently vague to amount to no motivation at all.

Additionally, the structure of a computer, or computer-implemented system programmed to carry out an algorithm, is limited by the disclosed algorithm. See WMS Gaming Inc. v. Int'l Game Tech., 184 F.3d 1339, 1348 (Fed. Cir. 1999). A new machine (a special purpose computer) is created when a general purpose computer is programmed to carry out an algorithm for performing one or more particular functions. Id. citing In Re Alappat, 33 F.3d 1526, 1545 (Fed. Cir. 1994) (*en banc*). When a general purpose computer is programmed to perform a particular function by using a discovery not specified in the prior art, the resulting device or system would not be obvious under 35 U.S.C. §103 "because one not having knowledge of the [inventor's] discovery simply would not know what to program the computer to do." See In re Prater, 415 F.2d 1393, 1397-98 (CCPA 1969).

For an obviousness rejection under 35 U.S.C. §103, the prior art must be analyzed at the time the invention was made. The use of the teachings of the present invention to find obviousness is impermissible. Obviousness must not be read into an invention on the basis of applicant's own statements; that is, the prior art must be viewed without reading into that art the applicant's teachings. The issue, then, is whether the teachings of the prior art would, in and of themselves and without the benefits of appellant's disclosure, make the invention obvious.

In Re Sponnoble, 160 USPQ 237, 243 (CCPA 1969) (emphasis in original).

Accordingly, the Examiner must consider only the teachings of the prior art references.

All of the features of claim 1 are not taught by Tsutsumi et al. According to WMS Gaming Inc., 184 F.3d at 1348, the system of claim 1 defines a communication algorithm. Since Tsutsumi et al. admittedly fails to teach or suggest all of the features of claim 1, it is respectfully submitted that it would not have been obvious to one of ordinary skill in the art to combine Tsutsumi et al. with the other references.

Further, when an algorithm is not taught or suggested by a prior art reference, one of ordinary skill in the art would not know what to program a computer to do. See e.g., In re Prater, 415 F.2d at 1397-98. Thus, a new system has been created when a computer is programmed to carry out an algorithm to perform a particular function, as in claim 1. WMS Gaming Inc., 184 F.3d at 1348. Therefore, it is respectfully submitted that it would not have been obvious for one of ordinary skill in the art to modify Tsutsumi et al. as suggested by the Office Action. Thus, it is respectfully submitted that the rejection of claim 1 as obvious is improper.

Also, in rejecting claim 1 as obvious, it is respectfully suggested that improper hindsight has been used. Tsutsumi et al. fails to teach or suggest the features of claim 1. Thus, without reference to the teachings of the disclosure of the present invention, one of ordinary skill in the art would not have the requisite knowledge to modify Tsutsumi et al. as suggested by the Office Action.

According to In Re Sponnoble, 160 USPQ at 243 (CCPA 1969), such hindsight is impermissible. Therefore, it is respectfully submitted that for these reasons, the rejection of claim 1 is improper and should be withdrawn.

C. The rejection of claim 11 as unpatentable over Tsutsumi et al. in view of Dorenbosch et al. and Fishman et al.

Claim 11 has been rejected as unpatentable over Tsutsumi et al. in view of Dorenbosch et al. and Fishman et al. Please note that no motivation to combine references has been stated with regard to claim 11. This was stated in the Amendment After Final Rejection of June 13, 2007, but not addressed by the Advisory Action.

Claim 11 recites a communication system including a data concentrator computer, a mobile mailbox, separate and distinct from the data concentrator computer, for communicating with the data concentrator computer, a first mobile data acquisition device communicating with the mobile mailbox, and a second mobile data acquisition device communicating with the mobile mailbox. The mobile mailbox allows peer to peer communication between the first and second mobile data acquisition devices through broadcast messages from the mobile mailbox to the first and second mobile data acquisition devices, without communication with the data concentrator computer.

Applicant's representative has assumed that the Office Action intended for the same motivation utilized for claim 1 to also be utilized for claim 11. In such a case, the previous arguments regarding claim 1 are hereby applied in support of the patentability of claim 11 as well. Therefore, it is respectfully submitted that for those reasons, the rejection of claim 11 is improper and should be withdrawn.

D. The rejection of claim 15 as unpatentable over Tsutsumi et al. in view of Dorenbosch et al., Fishman et al., and Mercer

It is respectfully submitted that claim 15 is patentable for at least the reasons set forth above regarding claim 11, from which claim 15 depends. Further, claim 15 recites that the mobile mailbox generates a Last Roll Call Timestamp.

The Office Action cites "section 0003" of Mercer for motivation that it would have been obvious to "incorporate a time stamp as taught by Mercer into a mobile mailbox device as taught by Fishman et al. into a mailbox device separate from the data concentrator computer and a broadcast message from the mailbox to first and second mobile devices as taught by Dorenbosch et al. into Tsutsumi's network device in order to reduce time for the user" (Office Action, page 9, para. 3).

First, it has been assumed that "section 0003" was intended to be paragraph [0003] of Mercer. Paragraph [0003] recites that a "mobile device could reduce the amount of effort for a user to reply to a SMS message". It is respectfully submitted that reducing effort does not necessarily equate to reducing time.

Second, how the simple statement "to reduce time for a user" could motivate one of ordinary skill in the art to incorporate a time stamp from one reference, Mercer, into a mailbox of another reference, Fishman et al., and a broadcast message of a third reference, Dorenbosch et al., and then all of this into a fourth reference, Tsutsumi et al., is unclear to Applicant's representative. The Advisory Action, not referring to any claim in particular, recited the USPTO form paragraph language relating to the test for obviousness not requiring bodily incorporation of secondary features into a primary

reference. It is respectfully submitted that, while bodily incorporation is not required, some specific connection between the actual modification being suggested and the motivation for that modification should be present.

Third, while this statement of motivation is generally a worthwhile endeavor, this statement does not specifically address the modifications of Tsutsumi, by Mercer, necessary to disclose the communication system recited in claim 15. In fact, adding a Last Roll Call Timestamp could actually increase time for a user. Further, this general statement of motivation is sufficiently vague to amount to no motivation at all.

Therefore, it is respectfully submitted that for these further reasons, the rejection of claim 15 is improper and should be withdrawn.

E. The rejection of claim 16 as unpatentable over Tsutsumi et al. in view of Dorenbosch et al. and Fishman et al.

Claim 16 has been rejected as unpatentable over Tsutsumi et al. in view of Dorenbosch et al. and Fishman et al. Please note that no motivation to combine references has been stated with regard to claim 16. This was stated in the Amendment After Final Rejection of June 13, 2007, but not addressed by the Advisory Action.

Claim 16 recites a computer program product for allowing communication between a plurality of mobile devices. The computer program product includes: a first instruction for activating a first mobile device; a second instruction for requesting a roll call from a gateway device by the first mobile device; a third instruction for broadcasting a please identify message to a second mobile device and a third mobile device; and a fourth instruction for providing peer to peer communication between the first mobile

device and the second and third mobile devices through broadcast messages from a mobile mailbox to the first and second mobile devices. The peer to peer communication occurs without communication with a non-mobile data concentrator computer.

Applicant's representative has assumed that the Office Action intended for the same motivation utilized for claim 1 to also be utilized for claim 16. In such a case, the previous arguments regarding claim 1 are hereby applied in support of the patentability of claim 16 as well. Therefore, it is respectfully submitted that for those reasons, the rejection of claim 16 is improper and should be withdrawn.

8. CONCLUSION

In view of the foregoing, Applicant's representative respectfully submits that claims 1, 11, and 16, as well as claims 2-10, 12-15, and 17-20 which depend from claims 1, 11, and 16, respectively, are in condition for allowance. Reversal of the rejection of claims 1-20 is respectfully requested.

9. CLAIMS APPENDIX

Attached Appendix A contains a copy of the claims on appeal.

10. EVIDENCE APPENDIX

Attached Appendix B contains a statement that there is no additional evidence being considered.

11. RELATED PROCEEDINGS APPENDIX

Attached Appendix C contains a statement that there are no proceedings related to this appeal.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Robert N. Lipcsik', written over a horizontal line.

Robert N. Lipcsik
Reg. No. 44,460

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APPENDIX A

1. A communication system comprising:
 - a data concentrator computer;
 - a mobile gateway device, separate and distinct from said data concentrator computer, for communicating with said data concentrator computer;
 - a first mobile data acquisition device communicating with said mobile gateway device; and
 - a second mobile data acquisition device communicating with said mobile gateway device,said mobile gateway device allowing direct communication between said first and second mobile data acquisition devices, through broadcast messages from said mobile gateway device to said first and second mobile data acquisition devices, without communication with said data concentrator computer.
2. The communication system as set forth in claim 1 wherein said first mobile data acquisition device initiates an "Am I Alive?" transmission.
3. The communication system as set forth in claim 1 wherein said first mobile data acquisition device sends a "Roll Call" request to said gateway device.
4. The communication system as set forth in claim 1 wherein said mobile gateway device broadcasts a "Please Identify" message to said second mobile data

acquisition device.

5. The communication system as set forth in claim 1 said second mobile data acquisition device transmits a device identification to said mobile gateway device.

6. The communication system as set forth in claim 1 wherein said mobile gateway device transmits an identification of said second mobile data acquisition device.

7. The communication system as set forth in claim 1 wherein said first mobile data acquisition device communicates with said data concentrator computer through said mobile gateway device.

8. The communication system as set forth in claim 1 wherein said data concentrator computer sends a "Please Identify" message to said mobile gateway device.

9. The communication system as set forth in claim 1 wherein said first mobile data acquisition device indicates that "Roll Call" data is available.

10. The communication system as set forth in claim 1 wherein said data concentrator computer sends a "Send Roll Call" request to said first mobile data

acquisition device through said mobile gateway device.

11. A communication system comprising:

- a data concentrator computer;
- a mobile mailbox, separate and distinct from said data concentrator computer, for communicating with said data concentrator computer;
- a first mobile data acquisition device communicating with said mobile mailbox; and
- a second mobile data acquisition device communicating with said mobile mailbox,

said mobile mailbox allowing peer to peer communication between said first and second mobile data acquisition devices, through broadcast messages from said mobile mailbox to said first and second mobile data acquisition devices, without communication with said data concentrator computer.

12. The communication system as set forth in claim 11 wherein said mobile mailbox maintains Roll Call Data for said first and second mobile data acquisition devices.

13. The communication system as set forth in claim 11 wherein said mobile mailbox services a Roll Call of said first and second mobile data acquisition devices.

14. The communication system as set forth in claim 11 further including a third mobile data acquisition device for communicating peer to peer with said first mobile data acquisition device.

15. The communication system as set forth in claim 11 wherein said mobile mailbox generates a Last Roll Call Timestamp.

16. A computer program product for communication between a plurality of mobile devices, said computer program product being stored by a tangible medium, said computer program product comprising:

a first instruction for activating a first mobile device;

a second instruction for requesting a roll call from a gateway device by the first mobile device;

a third instruction for broadcasting a please identify message to a second mobile device and a third mobile device; and

a fourth instruction for providing peer to peer communication between the first mobile device and the second and third mobile devices through broadcast messages from a mobile mailbox to the first and second mobile devices, the peer to peer communication occurring without communication with a non-mobile data concentrator computer.

17. The computer program product as set forth in claim 16 further including a fifth instruction for adding device identification data for the second and third mobile devices to the mobile mailbox.

18. The computer program product as set forth in claim 17 further including a sixth instruction for generating a history log of parsed roll call data by a data concentrator computer.

19. The computer program product as set forth in claim 18 further including a seventh instruction for transmitting identification data to the mobile mailbox by the second and third mobile devices and a fourth mobile device.

20. The computer program product as set forth in claim 19 further including an eighth instruction for transmitting a "Please Identify" message from the data concentrator computer to the first mobile device through the mobile mailbox.

APPENDIX B

There is no additional evidence being considered.

APPENDIX C

There are no proceedings related to this appeal.